IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

BAJRANG LAL & OTHERS. V. THE STATE OF RAJASTHAN & OTHERS.

S.B..CIVIL WRIT PETITION NO.2231/2004.
Under Article 226 of the Constitution of India.

DATE OF ORDER: 12.05.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.S.L.Jain, for Petitioners.
Mrs. Vidyawati Bora, Assistant Government Advocate, for the State of Rajasthan – Respondents.

BY THE COURT:

REPORTABLE.

The instant writ petition has been filed by the petitioners, praying therein that by an appropriate writ, order or direction, the respondents be directed to finalize the provisional seniority list published on 22.10.2003 (Annexure 4) and, after finalizing the seniority list, the respondents may further be directed to convene the Departmental Promotion Committee (D.P.C.) for promotions to the post of Assistant Engineers (AENs), on the basis of seniority amongst the Junior Engineers, working with the Urban Improvement Trusts (UITs). It has also been prayed that the respondents may be restrained from filling up the posts of Assistant Engineers lying vacant in various Urban Improvement

Trusts by deputation from other Departments.

The facts giving rise to the instant petition are that the petitioners have obtained their degrees of Civil Engineering as well as Diploma in Civil Engineering from the recognized Universities and hence, they were eligible for appointment on the post of Junior Engineer (JEN) (Civil). Therefore, they were appointed on the post of Junior Engineers (JENs) and since then, they are working on the said posts.

The services of the petitioners are governed by the Rajasthan Subordinate Engineering (Building and Roads Branch) Service Rules, 1973. After due selection, the petitioners have been given appointment on the substantive posts. The appointment on the post of Junior Engineer (Degree-holder), Junior Engineer (Diploma-holder) is 100% by direct recruitment and the qualification prescribed is Degree in Civil Engineering from a University. Thus, the petitioners fulfill the requisite qualifications for appointment as a Junior Engineer (Civil).

The Urban Development Department has adopted the Service Rules of the Rajasthan Service of Engineers (Building and Roads Branch) Rules, 1954 (for short, 'the Rules, 1954') and the Rajasthan Subordinate Engineering (Building and Roads Branch) Service Rules, 1973 (hereinafter referred to as 'the Rules, 1973') by order dated 10.7.1975 (Annexure 1). These Rules have been adopted, because there are no other Rules for recruitment, promotions, etc. in the Urban Improvement Trusts

of Rajasthan.

The promotions to the posts of Assistant Engineer are governed by the Rules, 1954, under which, for promotions from the post of Junior Engineer to the Assistant Engineer (Civil) , 50% of the posts will be filled up by direct recruitment and the remaining 50% posts will be filled up by promotion and out of the those 50%, 30% by promotion from Junior Engineers (Diploma-holders) and the remaining 20% by promotion from Junior Engineers (Degree-holders). The requisite qualification and experience for promotion is B.E. Civil or qualification declared equivalent thereto by the Government and three years' experience as Junior Engineer (Civil) or Diploma in Civil Engineering from a recognized institution and ten years' experience as Junior Engineer (Civil). Thus, as per the qualification and experience, all the petitioners are eligible for promotion to the post of Assistant Engineer.

At present, 20 posts of Assistant Engineers are lying vacant and these 20 posts are to be filled up by seniority amongst the Junior Engineers, working with the Urban Improvement Trusts.

Part – V of the Rules, 1954, which prescribes procedure for recruitment by promotion, reads as under :-

"The procedure for selection is that as soon as it is decided that recruitment to a certain number of posts in the service shall be made by promotion, the Chief Engineer shall prepare a correct and complete list containing names and not exceeding 5 times the number of vacancies, out of the senior most

substantive Junior Engineers and he shall forward this list along with their confidential reports and personal files to the Secretary to the Government and, thereafter, a Committee consisting of the Chairman of the Commission or the Chairman is unable to attend, to any other Member thereof nominated by him and other Secretaries not below the rank of Deputy Secretary and the Chief Engineer shall consider the cases of all the persons included in the list, interviewing such of them as they deem necessary and shall prepare a list containing names of suitable candidate up to twice the number of such posts as are indicated in sub-rule (1)."

It is submitted by the learned counsel for the petitioners that various representations (Annexures 2 and 3) were made to the respondents to the effect that since 1994, the posts are lying vacant, but the Government has not considered their cases for promotions, though the posts are lying vacant and on first of April of every year, actual number of vacancies has to be determined by the Appointing Authority and these posts are to be filled by seniority from seniority list. The posts have been filed up by deputation from other Departments.

It is further submitted by the learned counsel for the petitioners that the respondents also published the provisional seniority list (Annexure 4) of the Junior Engineers on 22.10.2003 and invited the objections within 15 days from its publication. But no one has made any representation, because as per the seniority list, their seniority has been assigned as per their appointment order.

It is also submitted by the learned counsel for the petitioners that the State Government has not made any direct

appointment on the post of Assistant Engineer at various Urban Improvement Trusts in the State of Rajasthan. Thus, all these posts of Assistant Engineers, which have been marked for direct appointment, have to be fulfilled by promotions amongst the Junior Engineers. In this view of the matter, all the posts of Assistant Engineers are to be fulfilled by promotions amongst Junior Engineers. According to the learned counsel, at present, six Assistant Engineers are working on deputation from other Departments on the posts of Assistant Engineer.

It is also submitted by the learned counsel for the petitioners that earlier, a provisional seniority list was published in the year, 2001 and objections were invited, but, that seniority list has not been finalized and once again, on 22.10.2003, the provisional seniority list of Junior Engineer/Deputy Engineer has been published and objections have been invited. Thus, according to the learned counsel, instead of finalizing the seniority list, the respondents are using the delaying tactics in finalizing the seniority list.

It is contended by the learned counsel for the petitioners that the respondents have convened the DPC for higher posts like as from Assistant Engineer to Executive Engineer in 1994 and, thereafter, twice in 1996. The DPC for promotion from Executive Engineer to Superintending Engineer has been convened in the years 1996, 1998 and 2003. The DPC for promotion from Superintending Engineer to Additional Chief

Engineer has also been convened in the years 1994, 1998 and 2003. Thus, according to the learned counsel, for higher posts, DPC has been convened at various times, as mentioned above, but, for promotions of Junior Engineers, DPC has not been convened since 1995.

It is strenuously contended by the learned counsel for the petitioners that the respondents are not convening the Departmental Promotion Committee since the year 1994 and the petitioners, who are eligible for promotions, have been deprived from promotion on the post of Assistant Engineers.

It is vehemently argued by the learned counsel for the petitioners that the respondents are continuously fulfilling the vacant posts of Assistant Engineers lying at various Urban Improvement Trusts in State of Rajasthan by deputation from other Assistant Engineers. Thus, in this way, the claim of the petitioners for promotion has been hampered.

Ultimately, a notice for demand of justice was also served upon the respondents on 16th April, 2004, stating therein that 20 posts of Assistant Engineers at various Urban Improvement Trusts are lying vacant and these posts are to be filled up by promotions, from the Junior Engineers, who are working with the Trusts, but, without considering the claim of the petitioners and convening the D.P.C., the respondents are fulfilling these posts by deputation from other departments and genuine claim of the petitioners has been ignored.

Lastly, it is submitted that instead of fulfilling the posts by deputation, the respondents should convene the meeting of D.P.C. and promotion should be made according to the seniority as per criteria laid down in the aforesaid Rules.

In support of his contentions, learned counsel for the petitioners has relied on the case of Dr.G.N.Saxena v. State of Rajasthan through Secretary, Medical & Health Department, Jaipur (1993 (3) W.L.C. p.98).

On the other hand, it is submitted by the learned counsel for the respondents that the respondents – Department has convened a meeting for Departmental Promotion Committee in the year, 1994-95 for the promotion of Junior Engineer on the post of Assistant Engineer. Thereafter, a provisional seniority list of Junior Engineers has been published by the respondents. Now, the proceedings have been initiated to consider the objections. The meeting of the DPC would be held after publishing the final seniority list of Junior Engineers.

It is further submitted by the learned counsel for the respondents that the posts of Assistant Engineers in various Urban Improvement Trusts have been filled up by way of deputation for the smooth functioning of the respective UITs.

It is also submitted by the learned counsel for the respondents that the last seniority list of Junior Engineers was published on 30.8.1989 and, thereafter, a provisional seniority list has been published on 22.10.2003 and the same has not yet

been finalized. Thus, the final seniority list of Junior Engineers would be published after finalization of the objections.

It is contended by the learned counsel for the respondents that eighteen Junior Engineers have been deputed on ad hoc basis on the post of Assistant Engineers, so that the work of the Urban Improvement Trusts may not suffer. The process of finalization of the seniority list is going on and after publication of the final seniority list, the meeting of the DPC would be held by the Department for promotion on the post of Assistant Engineers. Thus, according to the learned counsel, the action of the respondents is reasonable, as the process of finalization of the seniority list is going on and the meeting of the DPC would be convened shortly, after issuance of the final seniority list. Sofar as deputation of the Assistant Engineers is concerned, it is submitted by the learned counsel for the respondents that the deputation has been made till availability of the Assistant Engineers after promotion. The Junior Engineers have been posted as working arrangement for smooth functioning of the Department against the vacant posts of Assistant Engineers and they have not been promoted on the post of Assistant Engineers.

Heard learned counsel for the parties.

Be that as it may, but, it is admitted position that the respondents are not convening the Departmental Promotion Committee since the year, 1994, which resulted into the deprivation of the eligible candidates for consideration of their

case for promotions to the posts of Assistant Engineers, as, admittedly, the Junior Engineers have not been considered for promotion to the post of Assistant Engineer. It is also admitted position that the respondents, in the garb/pretext of smooth functioning of the UITs, are fulfilling the vacant posts of Assistant Engineers by deputation from other Departments. It is not in dispute that despite a number of representations made by the Junior Engineers to the Respondents, the seniority list has not been finalized. It is significant to note that on 9.2.2005, this Court took a serious view of the matter and granted one month's time to the respondents to finalize the provisional seniority list as published on 22.12.2003 (Annexure 4) while completing all the formalities, strictly in accordance with the Rules, as Mr.Narpat Singh Shekhawat, ALR, Officer-in-Charge, who was present in the Court, has assured the Court that provisional seniority list is likely to be finalized within a period of one month. Thus, keeping in view the facts and circumstances of the case and for the reasons given by Mr.Narpat Singh Shekhawat, Officer-in-Charge of the case, the matter was ordered to be listed on 14.3.2005.

It is a very sad state of affairs that on 14.3.2005, instead of complying with the direction of this Court given on 9.2.2005 and finalizing the seniority list, the respondents have moved an application in a most casual and cavalier manner for extension of three months' time.

Again, on 30.3.2005, while taking a serious view of the

matter,coupled with the non-compliance of the order of the Court dated 9.2.2005, this Court has no option, but to pass the following order:-

" I have perused the application. I am not satisfied with the reasons mentioned in the application for extension of time, whereas the matter is pending since long back, however, the provisional list has not been finalized by the concerned authority. It is a matter of serious concern that the legal rights of the party are jeopardised by the non-action of the respondent authority.

In view of the above, though I am not satisfied with the reasons mentioned in the application, however, in the interest of justice, I direct the Deputy Secretary, Urban Development Department to remain personally present before this Court on 13.4.2005. In case, the compliance is being made, then there is no need for the personal appearance. In case, compliance is not being made, then, the Deputy Secretary himself shall report the reasons therefor before this Court."

The matter was ordered to be listed on 13.4.2005. Then only, on 12.4.2005, vide Order No.P. 1(2)NVV/II/81, Jaipur dated 12.4.2005, the final seniority list was published by the Deputy Secretary to the Government of Rajasthan. It shows nothing but a lethargy and inaction on the part of the respondents. It requires serious consideration of the State Government. This Court can issue a writ to the respondents – Department compelling it to perform its duty in accordance with the Rules. The function of the Court is to examine the impugned action in accordance with law and to determine whether the executive has acted within the powers and functions assigned under the Constitution.

In the instant case, admittedly, under the aforesaid Service Rules, the jurisdiction and powers to make the selection by

promotion are vested in the Departmental Promotion Committee under Part V of the Service Rules, wherein the procedure for recruitment by promotion has been contemplated and the DPC has to play its prominent role by applying the norms and tests , strictly in accordance with law. It is admitted case of the petitioners that no meeting of the Departmental Promotion Committee has taken place for recruitment by promotion to the posts of Assistant Engineers since the year, 1994. And, instead of promoting the Junior Engineers, who are working with the UITs, by convening the DPC, to the post of Assistant Engineers, the Department is filling up the vacancies by brining the persons on deputation, as admittedly, at present, 6 Assistant Engineers are working on deputation.

In the result, the writ petition is allowed. The respondents are directed to convene the Departmental Promotion Committee for promotions on the post of Assistant Engineers and consider the case of the Junior Engineers/eligible candidates working with the Urban Improvement Trusts, strictly in accordance with the Rules. The respondents are also directed to complete the aforesaid exercise as early as possible, preferably within a period of six months from the date of receipt of a certified copy of this order.

The parties are left to bear their own costs.

(R.P.VYAS),J.

Scd.